

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

YEHEZKEL ELIA AND DAVID ELYAHO,  
States,

Defendants.

Affidavit of  
Defendant  
Made Pursuant to  
Simmons v. United  
390 U.S. 377 (1968)  
07 Cr. 543 (CLB)

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STATE OF NEW YORK )

COUNTY OF WESTCHESTER ) ss.:

DAVID ELYAHO, being duly sworn and pursuant to Simmons v.  
United States, 390 U.S. 377 (1968) deposes and states the  
following:

1. I am a defendant in this case.
2. My brother, YEHIZKEL ELIA, is a co-defendant. He has  
filed a motion to suppress evidence seized from Sneaker Mania,  
Inc., Suite 802, 6 Xavier Drive, Cross County Shopping Center,  
Yonkers, New York; from Sneaker Mania Store, Including  
Basement Storage Area, 1F Xavier Drive, Cross County Shopping  
Center, Yonkers, New York and from Sports Stop Store,  
Including Basement Storage Area, 17 Xavier Drive, Cross County  
Shopping Center, Yonkers, New York, on February 20, 2004, as a  
result of the execution of search warrants.

3. I wish to join in this motion to suppress and submit this affidavit on the issue of standing.

4. I was employed by my brother at Final Touch Jewelry at the time of the warrant execution. Final Touch Jewelry is a small store located in the Cross County shopping center in Yonkers which was not searched. Books and records of Final Touch were kept at the various premises which were subject to the warrant search including the offices at 6 Xavier Drive, Yonkers. As an employee I had permission to be present in the offices at 6 Xavier Drive which were subject to search. I was usually present at this location on a weekly basis, and during some weeks on a daily basis. I had a key to the office and would meet my brother in the office several times per week in connection with the Final Touch business. On the day the search warrant was executed I was present in my brother's residence at 12 Sunset Lane, Harrison, New York when the agents came to his home. I was in phone communication with my brother and accompanied the agents to the 6 Xavier Drive office and was present there several hours while the search was being conducted.

5. As a business employee I believe I had a reasonable expectation of privacy in the offices searched as an employee and have standing to challenge the search and retrieval of

business properties and records. /S/

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David Elyaho

Sworn to before me this

18th day of January, 2008.

/S/ Notary Public